

**Introduced by Senator Cox**

February 23, 2007

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An act to amend Sections 22050, 22105, 22109, and 50123 of, and to add Section 22065 to, the Financial Code, relating to lending.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 998, as introduced, Cox. Lenders.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders, as defined, by the Commissioner of Corporations and exempts specified entities from its provisions. Existing law requires the commissioner to investigate an applicant for licensure and, in the case of an applicant that is a corporation, trust, or association, to investigate its principal officers, directors, and certain other persons. Existing law authorizes the commissioner to deny an application for licensure under specified conditions.

This bill would exempt a person from the California Finance Lenders Law if that person is doing business under the laws of any state relating to, among other things, banks, credit unions, and small business investment companies. The bill would also exempt specified commercial loan transactions with sophisticated borrowers, as defined, from the provisions of the California Finance Lenders Law. The bill would require the commissioner, in investigating applications for licensure submitted by a corporation, trust, limited liability company, or association, to additionally investigate the applicant and its managing members. The bill would also authorize the commissioner to deny an application for licensure if the applicant itself has, within the last 10 years, been convicted or plead nolo contendere to a crime or committed specified acts involving dishonesty, fraud, or deceit.

Existing law, the California Residential Mortgage Lending Act, provides for the licensing and regulation by the commissioner of persons engaged in the business of making residential mortgage loans or servicing those loans. The California Residential Mortgage Lending Act requires a licensee that ceases to engage in activity regulated by the act, and that no longer desire to be licensed, to inform the commissioner in writing, surrender the license, and file other specified information with the commissioner, including a plan for the withdrawal from regulated business that includes a closing audit performed by an independent certified public accountant.

This bill would instead require the plan for withdrawal to include either the closing audit or a review or other procedures prescribed by rule or order of the commissioner.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 22050 of the Financial Code is amended  
2     to read:  
3     22050. (a) This division does not apply to any person doing  
4     business under any law of ~~this~~ any state or of the United States  
5     relating to banks, trust companies, savings and loan associations,  
6     insurance premium finance agencies, credit unions, small business  
7     investment companies, California business and industrial  
8     development corporations, or licensed pawnbrokers.  
9     (b) This division does not apply to a check casher who holds a  
10    valid permit issued pursuant to Section 1789.37 of the Civil Code  
11    when acting under the authority of that permit, and shall not apply  
12    to a person holding a valid license issued pursuant to Section 23005  
13    of the Financial Code when acting under the authority of that  
14    license.  
15    (c) This division does not apply to a college or university making  
16    a loan for the purpose of permitting a person to pursue a program  
17    or course of study leading to a degree or certificate.  
18    (d) This division does not apply to a broker-dealer acting  
19    pursuant to a certificate then in effect and issued pursuant to  
20    Section 25211 of the Corporations Code.

1 (e) This division does not apply to any person who makes no  
2 more than one loan in a 12-month period as long as that loan is a  
3 commercial loan as defined in Section 22502.

4 (f) This division does not apply to any public corporation as  
5 defined in Section 67510 of the Government Code, any public  
6 entity other than the state as defined in Section 811.2 of the  
7 Government Code, or any agency of any one or more of the  
8 foregoing, when making any loan so long as the public corporation,  
9 public entity, or agency of any one or more of the foregoing  
10 complies with all applicable federal and state laws and regulations.

11 (g) This section shall become operative December 31, 2004.

12 SEC. 2. Section 22065 is added to the Financial Code, to read:

13 22065. (a) This division shall not apply to a bona fide debt  
14 financing transaction as long as all of the following requirements  
15 are met:

16 (1) The loan is a commercial loan, as defined in Section 22502.

17 (2) The borrower is a sophisticated borrower, as defined in  
18 subdivision (b).

19 (3) The debt financing transaction is for an amount of at least  
20 one million dollars (\$1,000,000), exclusive of fees and expenses.

21 (b) For purposes of this section, a sophisticated borrower means  
22 either of the following:

23 (1) An employee benefit plan within the meaning of the  
24 Employee Retirement Income Security Act.

25 (2) A charitable organization, corporation, limited liability  
26 company, trust, or partnership with assets exceeding five million  
27 dollars (\$5,000,000).

28 SEC. 3. Section 22105 of the Financial Code is amended to  
29 read:

30 22105. Upon the filing of an application pursuant to Section  
31 22101 and the payment of the fees, the commissioner shall  
32 investigate the applicant and its general partners and persons  
33 owning or controlling, directly or indirectly, 10 percent or more  
34 of the outstanding interests or any person responsible for the  
35 conduct of the applicant's lending activities in this state, if the  
36 applicant is a partnership. If the applicant is a corporation, trust,  
37 *limited liability company*, or association, including an  
38 unincorporated organization, the commissioner shall investigate  
39 *the applicant*, its principal officers, directors, *managing members*,  
40 and persons owning or controlling, directly or indirectly, 10 percent

1 or more of the outstanding equity securities or any person  
2 responsible for the conduct of the applicant's lending activities in  
3 this state. Upon the filing of an application pursuant to Section  
4 22102 and the payment of the fees, the commissioner shall  
5 investigate the person responsible for the lending activity of the  
6 licensee at the new location described in the application. The  
7 investigation may be limited to information that was not included  
8 in prior applications filed pursuant to this division. If the  
9 commissioner determines that the applicant has satisfied this  
10 division and does not find facts constituting reasons for denial  
11 under Section 22109, the commissioner shall issue and deliver a  
12 license to the applicant.

13 For the purposes of this section, "principal officers" shall mean  
14 president, chief executive officer, treasurer, and chief financial  
15 officer, as may be applicable, and any other officer with direct  
16 responsibility for the conduct of the applicant's lending activities  
17 within the state.

18 SEC. 4. Section 22109 of the Financial Code is amended to  
19 read:

20 22109. (a) Upon reasonable notice and opportunity to be heard,  
21 the commissioner may deny the application for any of the following  
22 reasons:

23 (1) A false statement of a material fact has been made in the  
24 application.

25 (2) ~~An~~ *The applicant or an* officer, director, general partner,  
26 person responsible for the applicant's lending activities in this  
27 state, or person owning or controlling, directly or indirectly, 10  
28 percent or more of the outstanding interests or equity securities of  
29 the applicant has, within the last 10 years, been convicted of or  
30 pleaded nolo contendere to a crime, or committed an act involving  
31 dishonesty, fraud, or deceit, if the crime or act is substantially  
32 related to the qualifications, functions, or duties of a person  
33 engaged in business in accordance with this division.

34 (3) The applicant or an officer, director, general partner, person  
35 responsible for the applicant's lending activities in this state, or  
36 person owning or controlling, directly or indirectly, 10 percent or  
37 more of the outstanding interests or equity securities of the  
38 applicant has violated any provision of this division or the rules  
39 thereunder or any similar regulatory scheme of the State of  
40 California or a foreign jurisdiction.

1 (b) The application shall be considered withdrawn within the  
2 meaning of this section if the applicant fails to respond to a written  
3 notification of a deficiency in the application within 90 days of  
4 the date of the notification.

5 (c) The commissioner shall, within 60 days from the filing of  
6 a full and complete application for a license with the fees, either  
7 issue a license or file a statement of issues prepared in accordance  
8 with Chapter 5 (commencing with Section 11500) of Part 1 of  
9 Division 3 of Title 2 of the Government Code.

10 SEC. 5. Section 50123 of the Financial Code is amended to  
11 read:

12 50123. (a) A license shall remain in effect until suspended,  
13 surrendered, or revoked.

14 (b) A licensee that ceases to engage in the business regulated  
15 by this division and desires to no longer be licensed shall inform  
16 the commissioner in writing and, at that time, surrender the license  
17 and all other indicia of licensure to the commissioner. The licensee  
18 shall file a plan for the withdrawal from regulated business,  
19 ~~including and the plan shall include~~ a timetable for the disposition  
20 of the business ~~and. The plan shall also include~~ a closing audit  
21 performed by an independent certified public accountant *or a*  
22 *review or other procedure prescribed by rule or order of the*  
23 *commissioner*. Upon receipt of the written notice and plan, the  
24 commissioner shall review the plan and, if satisfactory to the  
25 commissioner, shall accept the surrender of the license. A license  
26 is not surrendered until its tender is accepted in writing by the  
27 commissioner after a review, and a finding has been made on the  
28 licensee's plan required to be filed by this section, and a  
29 determination has been made that there is no violation of this law.

30 (c) A licensee may not surrender its license under this division  
31 and, under the authority of a real estate license, subsequently  
32 engage in residential mortgage lending or servicing activities that  
33 are subject to this division, unless the licensee has been licensed  
34 under this division for a period of five years or more.